United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7355

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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RUTH E. BUCK,

Appellant,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK; THE BOARD OF EDUCATION OF THE CITY OF NEW YORK; IRVING ANKER, individually and as Chancellor of Schools of the City of New York; THE COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT #25, QUEENS; THE PRESIDENT'S COUNCIL, DISTRICT #25, QUEENS; DOROTHY KAYE, individually and as President of the President's Council, District #25; and others whose identities are unknown,

Appellees.

#75-7355

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OFFICE OF CORPORATION COUNSEL
LAW DEPARTMENT
CITY OF NEW YORK

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

This is an appeal from the Eastern District Court's (Bruchhausen, J.) dismissal of the complaint of the appellant, Mrs. Ruth Buck, on the grounds of (1) lack of a substantial federal question; (2) preclusion of federal courts from assuming jurisdiction over Municipal Corporations; and (3) abstention of federal cou[illegible]til state proceedings have been exhausted.

Mrs. Buck brought an action in the District Court, pro se, on May 16, 1975 for injunctive and declaratory relief and punitive damages because the Board of Education and others, including Chancellor of Schools, Irving Anker, and Dorothy Kaye, President of the Presidents' Council, School District #25, under color of the statutes, prevented and deprived her of equal opportunity to be elected in the school board election held on May 6, 1975 in violation of due process of law and equal protection and liberty as guaranteed by the Fourteenth and First Amendments of the United States Constitution. The action was brought pursuant to Title 42 USC 1983, 42 USC 1986, 28 USC 1343, 28 USC 1441 (3).

On May 6, 1975 an election was held for membership on the Boards of 32 Community School Districts in New York City. Mrs. Buck was one of nineteen designated candidates in School District #25, Queens. Responsibility for the elections was divided between the Board of Education and the Board of Elections. The primary thrust of the complaint is against the Board of Education and its employees and agents, including parent associations, because public funds, public school facilities, teacher time and children had been used to promote a group of "favored" candidates

and not all candidates equally.

Mrs. Buck discovered merely days before the election that school personnel, including teachers, had sent home through children to an estimated 50,000 parents, promotional material concerning a group of 9 or 10 favored candidates, and not about the other 9 candidates who were running. The material included lists of names of the favored, anecdotal material about them, and palm cards.

Furthermore, it was found that the public, upon inquiring at the public schools concerning the election, received from school personnel names of the favored candidates, and not of all candidates. Both public and parents were given the false impression that only 9 or 10 were running and that voters should number those candidates from 1 to 10 in the order of their preference.

Additionally, four special evenings had been set aside to give official opportunity for candidates to meet and address audiences in various public school auditoriums, but those official candidates nights were conducted by biased individuals who were known to be actively promoting the favored group. The audiences were meager in number, had significant numbers of the same people in attendance each night, questions posed to candidates were peculiarly screened, and Mrs. Buck was informed by Dorothy Kaye, chairing the meeting, that she would not be permitted to give any paper concerning her candidacy to anyone in the audience. At the same time the official statements of all of the candidates, as solicited by the League of Women Voters in cooperation with procedure set forth by the Board of Education and the Board of Elections, was withheld from the audience. Simultaneously the widespread distribution concerning the favored group through the public schools was

taking place.

As soon as complaint could be framed, Mrs. Buck brought an action in the Supreme Court, Queens County, by Order to Show Cause dated April 30, 1975, returnable May 5th, just one day prior to the scheduled election. She primarily sought to have the election postponed until material concerning her candidacy could be sent home to parents in a similar way as had been done for the favored candidates. A hearing was held on May 5th at which she and opposing attorney William DeWitt appeared. No opposing papers were filed. The application was denied by the court for lack of jurisdiction, and it was too late to appeal to prevent the election from taking place the next day.

On May 16, 1975 Mrs. Buck filed complaint in the U.S. District Court, Eastern District naming different defendants (see caption) including Irving Anker individually, and Dorothy Kaye individually, and including others whose identities were not as yet known; and including additional material based upon information that had come to her attention in the days following the election. She sought to prevent the newly elected Board from taking office on July 1st and punitive damages. She stressed violation of her Fourteenth Amendment Constitutionsl rights, alleged intentional, illegal, unfair and discriminatory use of the public schools, claimed illegal and harmful conspiracy to rig the school board election, and asserted a background of systematic discrimination and persecution of White Anglo-Saxon Protestants (herself being one) mostly at the hands of Jews in the New York City Public School System. She subpoenaed the record from the aforementioned Supreme Court case because allegations were therein supported by

affidavits; she moved to have the material considered in the District Court; she moved for shortening time foranswering; she noticed Dorothy Kaye for deposition; filed memoranda of law. A hearing was held on May 30th before Judge Bruchhausen with Mrs. Buck and opposing attorneys William DeWitt and Stanley Possess present. The fact that material concerning favored candidates, and not all candidates, was sent home through the public schools has never been denied. The only paper interposed by the time of the May 30th hearing was a 20 sentence memorandum of law by Mr. DeWitt seeking dismissal. Decision was reserved. Affidavit of Dorothy Kaye was received a week later, stating in part:

> "...these allegations...exist solely in the mind of the plaintiff who cannot or will not accept her defeat....
>
> "To permit this complaint to stand or to permit plaintiff to replead can only serve to encourage plaintiff and others like her to abuse the legal process."

On June 12, 1975 the action was totally dismissed and this appeal followed.

BACKGROUND

This case must be seen in its proper perspective which includes a history of racial and religious strife and other wrongdoing in the New York City public schools. It should be seen in the light of the current fiscal crisis of the City and in view of the current five day old teachers' strike. One effect of the rigging of the election in District #25 is that seven out of the nine seats available in the district were wrongly captured by union-endorsed candidates - hardly a healthy situation for the City with both a

teachers strike and the City at the brink of bankruptcy.

The Board of Education is staffed by racists,[1], by forgers[2], protected by district attorneys of Manhattan and Brooklyn[3], liars[4], anti-Protestants[5], perjurers[6], slanderers[7],

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1. Assistant Principal, Mary Cohen, Principal Morton Selub, District Superintendent Elizabeth O'Daly and others, all white, arranged the sudden ousting of 600 black students en masse from Lane High School, followed by their return because of denial of their constitutional rights, by order of Eastern District Court. (Weinstein, J., 69-C-326, McKnight, et al., v. The Board of Education of the City of New York).

2. Students at Franklin K. Lane High School, Brooklyn, in 1969 could and did buy forged permanent records with good marks and Regents credit, which could be used to gain admission to college, by paying $50.00 to Lane staff, that activity effectively covered by Principal, Morton Selub.

3. Complaint made to a Detective Buda was met with response that "they" are Jewish Communists and that "they" are liberal Jews, and then covered; complaints made to Richard Gaza of Brooklyn DA's office were ineffective, complaints made to DA in Manhattan were ineffective. In all, five personal visits were made to the District Attorneys of Manhattan and Brooklyn on various complaints, all to no avail.

4. Guidance Supervisor, Beverly Lipschitz, taught subordinate guidance counselors that there is no such thing as a lie, taught them not to enter certain matters into records because later they could not be denied; then she lied in official reports about a dissenting counselor in an effort to have the counselor rated unsatisfactory.

5. Guidance Director, Daisy Shaw arranged an official meeting held in May 1965 at the High School of Fashion Industries which professional staff were required to attend. Invited speaker, alleged to be Dr. Eli Ginzburg of Columbia University, condemned the White Anglo-Saxon Protestants, called them WASPS, declared that they had done so much damage to our country that new people had taken over and that the day of the WASP was over. The speech was applauded by Mrs. Shaw and others on the platform.

6. Medical Secretary Sarah Braphart perjured her testimony at administrative hearings used to accomplish the dismissal of a dissenting White Protestant tenured staff member and told under oath of a five-minute conversation that had never taken place.

7. Administrative Hearing Judge, Daniel Gutman lied in official report and slandered honest, competent tenured staff member in-

malpractitioners [8], manipulators of public funds [9], lawbreakers [10], intimidators [11], conspirators [12], instigators [13], double-talkers [14],

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clined to expose scandals, with intent to injure her reputation, recommended dismissal with no adequate basis.

8. Board of Education doctors used fraudulent medical procedures for substitution for due process to oust tenured staff. (Francine Newman v. Board of Education, this court, T2391, reversing dismissal by Judge Travia in Eastern District., cert. denied.)

9. Former Board of Education President, Murray Bergtraum, offered tenured, wrongly discharged guidance counselor a medical disability pension in exchange for an agreement to stay away from the courts, although there had never been any medical examination; his wife, Edith Bergtraum now the president of Local School Board, District #25, elected in the rigged election about which Mrs. Buck now complains.

10. Law Secretary Gary Sousa put together a "no-substance" case to accomplish wrongful dismissal of dissenting professional staff member, then refused to provide her with a tr[illegible] of the proceedings as required by New York State Education Law, resulting in litigation in Queens Supreme Court to obtain minutes.

11. Striking Principal, Morton Selub in 1968 threatened to hold back salaries of non-striking staff.

12. In agreement with Principal Morton Selub, Assistant Dean Sheld[illegible] Wein, both strikers, wrote a letter dated May 1968, reporting on a "tantrum" of a non-striker, the tantrum never having taken place. The letter was given to Mr. Selub who sent it to the Superintendent of Schools as one basis for ordering a psychiatric examination, the letter then sent to Medical Director Sidney Leibowitz and the person called for examination by a Dr. Murray Fischer. Upon reporting, supervising doctor, Dr. Naomi Poole, refused to come out of her office upon request because the file of the non-striker was already too thick.

13. Assistant Principal Mary Cohen used school time to encourage subordinate guidance counselors to contribute money to an advertising campaign to keep additional Blacks out of Franklin K. Lane High School.

14. In a grievance brought to Principal Morton Selub, against Assistant Principal Mary Cohen by Protestant guidance counselor, Ruth Buck, resolution of hearing was that unfounded letter of criticism would be removed from file, whereas later it was found that the letter was used a s a basis for Mr. Selub to support his request that Mrs. Buck be psychiatrically examined.

shirkers of responsibility[15], tyrants[16], falsifiers[17], evil-doers[18], spreaders of rumors[19], and those who interfere with elections[20]. This list could go on but is sufficiently illustrative. However, the system has been protected by the New York State Division of Human Rights[21], and by the

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15. District Superintendent Elizabeth O'Daly, during the three month teacher strikes of 1968, ignored pleas of working staff at Lane High School who sought her help and also caused them to be absent from their desks at times when they sought to work.

16. Superintendent of Schools, Nathan Brown, in 1969, suspended indefinitely without pay an outstanding tenured staff member a few days after she corresponded with High School Principals on her own time and exposed to them serious scandals in the school system on high levels. Suspension was followed by dismissal.

17. Following strikes, striking supervisors tampered with time cards of non-striking staff member, making it wrongly appear as a record of lateness which could be used as a cause for removal.

18. Director of Personnel, Theodore Lang, in order to encourage the suspension (and following dismissal) of dissenting staff member, wrote to Superintendent of Schools, Nathan Brown, that the staff member had unsuccessfully appealed an unsatisfactory rating whereas only valid satisfactory ratings existed and there had been no such appeal. (There had been, in fact, twelve annual satisfactory ratings). Superintendent Brown ordered the suspension which was followed by dismissal.

19. Assistant Principal, Mary Cohen, instilled fear and used school time to encourage professional staff to stay away from school on a regular school day, referred to as "Black Monday" because of alleged fear for their safety.

20. In a Board of Education election for members of a Principal's Consultative Council, supervisors arranged matters so that the election was really held by the United Federation of Teachers. No action was taken upon complaint to the office of High School Superintendent Jacob Zack.

21. No action was taken in 1968 on complaint against Assistant Principal Mary Cohen, Principal Morton Selub, Guidance Supervisor Daisy Shaw, and Guidance Supervisor Beverly Lipschitz, following hearing under hearing officer Jean MacPherson, but complainand was told by a Black professional staff member of the State Division of Human Rights that she could not find justice there because the Board of Education was too powerful for her alone.

New York City Commission on Human Rights[22], and by the New York State Supervisory Committee[23]. Attorney, Marjorie O'Connell, engaged at one point to litigate, informed the litigant (through her assistant) that $350.00 would have to be paid under the table to an aid to the governor in order to work out reinstatement through the office of Arthur Stern of the New York State Division of Human Rights. A small money judgment has been since entered against the attorney.[24]

Under these circumstances it can be easily understood that the Board of Education staff largely acts in whatever way it finds expedient to foster corrupt practices, to protect itself from exposure, and of course, to keep the billions of dollars intact and continuously flowing to the "in Group". Rigging a school board election to insure that the proper people - people who will know how to cooperate - will be elected is but one way to accomplish such ends.

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22. The New York City Commission on Human Rights was also disabled to act on serious complaint of White Protestant against Assistant Principal Mary Cohen; Principal Morton Selub; Guidance Supervisor, Beverly Lipschitz; and Guidance Director, Daisy Shaw; made to the Commission staff members: Jacob Wittner, Henry Sloman and a Mr. Perez-Wilson.

23. Although the New York State Supervisory Committee had been set up to protect non-striking teachers following the 1968 teacher strikes, Investigator Norman Frankel under the Chairman, Harold G. Israelson, could find no ground for protecting White Christian non-striker from Assistant Dean Sheldon Wein, Assistant Principal Mary Cohen and Principal Morton Selub and others and the Investigator resorted to questioning the complainant as to whether she thought Mary Cohen was Jewish.

24. Judgment entered July 30, 1975, Eastern District (Judd, J.) Buck v. The Board of Education of the City of New York, et al., 71-C-954.

FURTHER BACKGROUND

The public schools of New York City enroll over 1,000,000 children, more than half of whom are Black. The system is marked by racial contrasts. Franklin K. Lane High School, for example, located on the Brooklyn-Queens border, around 1972 enrolled about 59% Blacks, 18% Puerto Ricans and 22% others. School District #25, Queens, on the other hand, especially in its northern section is predominantly White, one of its schools, P.S. #32 being almost 100% White.

The Board of Education is a largely Jewish organization and is headed by Chancellor, Irving Anker. It is Anti-White Protestant, taking definite stand to keep White Protestants, called WASPS, out of its staff[25] and out of positions of influence.[26, 27] It is also anti-Black in many ways too numerous to list except to refer to the afore-mentioned ouster of 600 Black students from Lane High School; and also to mention the teacher strikes which, because of racial strife, closed almost all of the schools, except the predominantly Black schools in the Ocean-Hill Brownsville section of Brooklyn, in September, October and November of 1968. At that time the union alleged misbehavior of Blacks in Brooklyn for firing White teachers.

No information is available from Board of Education sources concerning the numbers of White Anglo-Saxon Protestants

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25. White Protestant applicant for regular teaching position was given a failing mark on examination for position by "mistake" by staff of office headed by Abraham Kroll.
26. White Protestant applicant for guidance counselor position was left off the list promulgated around May 1964, added to the list after some fuss.
27. White Protestant slandered by Bureau of Education and Vocational Guidance Director, Daisy Shaw, to Principal, Murray Cohn.

on its staff, and the numbers of Blacks on its staff throughout the City is not known to the writer. But in Franklin K. Lane High School more information is known and around 1969 White Protestants numbered about 2% of its staff. Blacks numbered about 4%.

The high school guidance staff on a city-wide basis is particularly illustrative of racial imbalance and how it is achieved. In 1969 there were two known White Protestant licensed guidance counselors on its staff throughout the entire city. One reportedly was married to a Jewish supervisor, and the other was ousted without due process and since ordered back to the Board of Education for proper hearings by order of the Eastern District (Judd, J., #71-C-954).

Discrimination and bias concerning the guidance staff is further illustrated by the procedure used in selecting counselors. It might have been assumed that they were appointed through a system of competitive examinations. But actually the competitive examinations were given to applicants first screened by Principals. The procedure was as follows. Applicants qualified for the examination by offering (1) evidence of completion of many specialized courses and (2) evidence of having already performed guidance-related experience, usually known as grade-advising. But there was no way of guaranteeing equal opportunity to get the required guidance-related experience, opportunity for grade advising positions being solely by invitation of the Principal. The "screened" applicants had opportunity to compete in examinations and, if successful, placed upon a list of those qualified formed under the supervision of Mrs. Daisy Shaw, who, as already mentioned, invited a racist speaker to condemn the White Protestants.

The United Federation of Teachers is the union that

represents New York City public school teachers. It is a largely Jewish organization headed by Albert Shanker, himself accused by his own staff of denying to them due process.[28] It is a rebellious, lawless organization, Mr. Shanker already having been jailed twice. Further, the Board of Education supports the union and acts directly against the public interest when there is conflict between the public interest and the interest of the union. This was amply demonstrated during the 1968 strikes at which time the Board of Education quickly rallied behind the striking union, locked non-striking teachers out of schools, and later engaged in other pro-union, anti-public and illegal activities.

(The media gave much time and attention to the strikes, indicating its effectiveness, showed white parents in Forest Hills, supporting the striking teachers, showed Dr. Bernard E. Donovan "pleading" with teachers to return (while keeping them out) and repeatedly showed Black Leaders, Rhody McCoy and C. Herbert Oliver of Ocean-Hill Brownsville on one side and Albert Shanker on the other side of the strikes. It gave little or no coverage at all to working teachers at Lane High School where students and teachers were reporting and conducting classes in spite of the fact that Principal Morton Selub had stood at the entrance gate telling teachers who wished to report that he had closed the school down.)

It was right after the teacher strikes of 1968 that the New York City Schools (except the high schools) were decentralized by legislative enactment in 1969 and which was followed in 1970 by the first election for local school board members ever held in New

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28. Charges and amended charges filed by the Teachers Representative Union (TRU) against United Federation of Teachers (UFT) local #2, AFT-CIO alleging violations of the National Labor Relations Act, Sections 8 (a) (1) (5). Hearings 2/25/75, 2/26/75, 2/27/75, 3/25/75 and 3/26/75.

York City. Before decentralization, the union bitterly opposed it and spent much time and money in Albany to influence its defeat. After it became a fact, the union became active in the elections and in 1975 spent $100,000 to support and advertise union endorsed candidates in the election about which this litigation is concerned.

The purpose of decentralization was to give more control of the schools and its budgets to the communities and in that way transfer much of the control from the central Board of Education, to local communities, particularly to Blacks and Puerto Ricans. The law, as enacted, was meticulous in detail even establishing that school board s would be elected through an elaborate system of proportional representation to insure that minorities would have a voice on school boards. But that whole system was sabotaged in District #25 by the purposeful rigging of the election at the hands of Irving Anker and others.

The same decentralization law (Article 52A of the New York State Education Law) that was aimed to help New York City, also provided forthe establishment of parent associations or parent-teacher associations in each school, again to provide opportunity for community involvement. But the parent associations are formulated under the guidance and direction and procedures set down by, and in consultation with Chancellor Anker and his staff; and it shouldbe borne in mind that the membership of parent associations is largely made up of unskilled and inexperienced members, and is therefore dependent upon receiving proper aid and leadership. As it turned out, the parent associations became yet another vehicle of the central board, subverting law and order, particularly in the 1975 school board election.

It is the activity of the parent associations, endorsing

selected candidates and not all candidates alike, through the use of the public schools, its staff and teachers, to advertise and promote and insure election of a favored group, with the knowledge of and encouragement of Chancellor Anker that is the crux of this lawsuit. Apparently there is a Jewish-dominated conspiracy to rig the election that takes elaborate form and is well concealed, but stretching from the Board of Education to and through the parent associations and through the use of intermediates who claim unofficial status but who wield great influence. That is not to say, however, that there are only Jewish voices in the Board of Education or in the parent associations.

Many, many parents do not join parent associations. The great majority, about 90%, do not even vote in the elections. Some claim that there is no point in voting because they always get their own people in. Parent association officers are reluctant to give information, upon request, as to the numbers of actual members, implying rather that membership is not as high as it might be because people are afraid to go out at night. In district #25 it has been found that parents of school children were told that they were members although they did not pay any dues or join. In District #25 small parent association groups aim to manipulate vast majorities. Thus they did, in fact, reach about 50,000 of the community through the use of the public schools without any regard as to how many they reached were even their own members.

Furthermore, the United Parent Association, which is an association of parent associations, fosters policies that are sharply in disagreement with desires of many parents, and some parent associations elect not to join the UPA. But the UPA is active in the affairs of parent associations whether or not they become members, providing

advice and legal assistance during and prior to school board elections. The parent associations in District #25 formed an association of its own presidents in Flushing, known as the Presidents Council of School District #25. Dorothy Kaye, believed to be a Jewish resident of Forest Hills, was elected president. Similarly, the parents associations formed a Parents Community School Board Election Committee of District #25, chaired by Jack Kaufman and Catherine Monroe. It is believed that these committees and association were formed to do for the parent associations what the parent associations as quasi-legal organizations, could not legally do for themselves. The election committee spread thousands of endorsements at housedoors in Flushing, apparently on the advice of the United Parent Association. Additionally, Dorothy Kaye, while supervising an official candidates night, and after having met with the United Parent Association staff every other Thursday for months before the election, prevented Mrs. Buck from even giving a written statement of her candidacy to anyone in the audience, and at the time that a flood of the endorsed candidates were reaching 50,000 of the community through the public schools. Dorothy Kaye responded in this lawsuit by implying immunity from suit, stating in her affidavit, dated June 3, 1975, in part:

> "I serve without vote. This position is wholly unsalaried...said Presidents Council is a wholly unofficial body having no statutory origin or authority."
>
> "To permit this complaint to stand...can only serve ...to discourage volunteers like myself from participating in school affairs...and penalize us for our honest efforts.

A WORD ABOUT THE CURRENT TEACHERS STRIKE

The current teachers strike has been effective at least to the extent encouraged by Chancellor Irving Anker, by School Board #25, and by the working supervisory staff. This is well illustrated by the following events: (1) On the evening of Monday, September 8, 1975, the United Federation of Teachers, which represents some, and not all of the New York City Teachers, called a strike; (2) the same day, Chancellor of Schools, Irving Anker, announced that the schools would remain open; (3) on the very same evening, even before the commencement of the first day of the strike, the school board of District #25, elected in the rigged election held on May 6th, and consisting of seven union-endorsed members on a nine-member board, voted to close down all of the schools, resulting in a lockout, virtually guaranteeing a 100% effective strike in District #25. (4) the next evening the school board voted to re-open the schools in the district.

This is confirmed in many ways. On the first day of the strike, Ms. Rita Gibbons, Principal of P.S. #32, told parents, when they reported to school, that there was no school and she sent them home. She did not suggest that parents go to the Superintendent's office. The principal at P.S. #120, another school in this district, did not permit the staff of non-striking school aides to go inside of the building, and instead came out on the steps, gave them their time cards, and sent them to the district office where they spent the day sitting in the auditorium. Even teachers reporting to work, for example, at P.S. 22 and P.S. 169, were directed away from the schools and sent to the district office.

The intent is clear. What the UFT striking teachers had not accomplished, the school board guaranteed. Staff were not to be seen by the public going into school. Working teachers were to be isolated from their regular surroundings, even intimidated by being made to report to the Superintendent. The schools would be emptied and then called unsafe. Parents would be met one by one by the Principals or their delegates and individually instructed to go home.

But Mrs. Buck has three children: Elizabeth, aged 15, attending Francis Lewis High School; Florence-Ellen, aged 8, attending P.S. 32 in third grade; Rebecca, aged 4, awaiting entrance to Kindergarten. Florence-Ellen is the one who attends school under the authority of District #25.

The New York State Education Law requires that children between the ages of seven and seventeen attend school on school days. Elizabeth and Florence-Ellen have, therefore, been attending school daily. Florence-Ellen, particularly, has been receiving full days of instruction under a non-striking licensed public school teacher. Further details concerning that matter are given in the Long Island Press article dated September 10, 1975, a copy of which is on the next page.

In order to accomplish the continuing lawful education of her children, Mrs. Buck exerted effort against the school system. It is the exertion of that effort, that led to events, which although detailed, clearly indicate the presistent unlawful conspiracy that is even up to the present time injuring the public.

On the first day of the strike, Tuesday, September 9th, the following incidents took place. (1) Rita Gibbons, Principal of P.S. #32, informed Mrs. Buck, when she came to school with

Long Island Press

155th YEAR No. 249 3★ WEDNESDAY, SEPTEMBER 10, 1975 Entered as Second Class Matter at Postoffice, Jamaica, N.Y. 10 CENTS

School was in for 2 little Flushing girls

Teacher Terence McLaughlin, assisted by an unidentified non-striking teacher, left, conducts a class of two with Florence Ellen Buck and her 9-year-old neighbor Ivonne Orellana, right, in a room full of chair-stacked desks. (Photo by Jack Kraut)

By ANN McCALLUM

Florence Ellen Buck and Ivonne Orellana, third-graders at P.S. 32 in Flushing, may have been the only city children who were in school all day yesterday.

They weren't in their home school, and they didn't have their regular teacher — but they were a class of two receiving classroom instruction because of her mother's insistence on Florence Ellen's right to an education.

Thousands of others either stayed home, like Darrell Young, 8, and his sister Mimi, 7, of Bayside, or went to school and were sent home, like Deverell Smith, 5, of Bayside, and Anthony Matthews, 16, and Paul Dent, 17, of Flushing.

Ruth E. Buck, mother of Florence Ellen, wasn't ready to sacrifice her child's education or two-year-old perfect attendance record.

* * *

ARMED WITH A CIRCULAR from Schools Chancellor Irving Anker saying that the schools would be open, Mrs. Buck went to P.S. 32 and insisted that Florence Ellen have the opportunity to come to school.

P.S. 32 administrators told her the schools were closed and referred her to the District 25 office at P.S. 200.

At the district office, Mrs. Buck, a defeated candidate in last spring's school board elections and a former guidance counselor who sued the Board of Education over her dismissal, demanded to know, "Who had voted to close the schools?"

She was told the vote had been taken at an executive session of the community school board Monday night, but that the district office had a non-striking teacher available to teach her daughter.

So Florence Ellen was seated in one of P.S. 200's

(Turn to Page 7)

2 little girls went to school

(Continued from Page One)

classrooms with Terence McLaughlin, who usually teaches the fifth grade at P.S. 22, and two other teachers who had reported to the district office in compliance with BOE instructions to teachers in closed schools.

McLaughlin, who has been teaching eight years, said he didn't believe in striking, but was the only teacher in his school not on strike.

* * *

FLORENCE ELLEN sat alone with the teachers through the morning, but when her mother brought lunch, she also brought Florence Ellen a classmate, Ivonne, who lives nearby and is in Florence Ellen's regular third grade class.

Florence-Ellen, that school was closed and that they should go home. She did not suggest that Mrs. Buck go to the Superintendent's office. (2) Mrs. Buck went to the Superintendent, indicating that Florence-Ellen was reporting to school. Mrs. Buck was met by (a) Ms. Scherne, official spokesman of Superintendent Joan Kenny, who explained that there was a strike and (b) by an offer to have Guidance Supervisor, Ms. Razran, explain the situation to Mrs. Buck, the latter invitation to talk being turned down by Mrs. Buck who was not interested in an explanationof the situation, but interested in talking to the supervisor of the Principal. Ms. Scherne indicated that Mrs. Buck might talk to people in the School Board office upstairs.

(3) In the school board office, Mrs. Buck met Board Member, Delores Tannenbaum and Executive Assistant, Ms. Demsky. The following exchange took place. Mrs. Buck (a) asked for the minutes of the meeting that had been held the previous night at which time the school board had voted to close the schools down, and (b) asked for the names of the members who had so voted. The response was that, since the school board had voted in executive session, there was no obligation to provide minutes, and that, as a part of the vote to close the schools, the Board may have voted not to disclose details about the voting. Mrs. Buck was advised that she could write a letter; she wrote a letter right there seeking the information and advising of her availability, if desired, at subsequent school board meetings.

(4) Meanwhile, Superintendent Kenny knew that there were licensed teachers right in her office who had reported to work. (5) A class was finally set up for Florence-Ellen with two of at least three teachers who had reported, and later in the day joined by another child.

(6) Upon returning home that day, Mrs. Buck made a call to Chancellor Anker, reached assistant, Lew Evers, and stated h r message asking Mr. Anker to exercise his supervisory powers ove. school board #25 which was interfering with the education of Florence-Ellen. (7) That night school board #25 met and voted to re-open the schools, and telephoned Mrs. Buck at home, so indicating, and advised that all of the radio stations had been informed that schools in the district would be open the following day. Mrs. Buck was instructed not to go back to the District Office the next day, but to report, instead, to Florence-Ellen's regular school, P.S. #32.

The events of the second day of the strike, Wednesday, September 10th are also illustrative. (1) Mrs. Buck was pressed for time, so Mr. Buck took Florence-Ellen to P.S. 32. Principal, Ms. Gibbons asked Florence-Ellen her name, and it was later learned that Ms. Gibbons thought she had said Florence Allen and she carried on conversation with Mr. Buck thinking he was Mr. Allen. She told Mr. Buck that there was a lockout and that no teachers report during a lockout. She advised him to go home and not to return that day or any day without first calling the school.

(2) Mrs. Buck returned to Ms. Gibbons with Florence-Ellen and was advised that no teachers were in. Mrs. Buck made the following suggestions: (a) that Ms. Gibbons a licensed teacher as well as principal, exercise her teaching ability and keep Florence-Ellen in school, or (b) that Ms. Rouse, Assistant Principal and also a licensed teacher, exercise her teaching ability and keep Florence-Ellen in school, or (c) that Florence-Ellen be left in the care of the regular school aide staff who could substitute in emergency.

The response of Miss Gibbons was that Principals have a contract and they don't teach; that Assistant Principals have a contract and they don't teach; and that school aides are not licensed teachers.

(3) Mrs. Buck went back to Superintendent Kenny. Miss Scherne arranged for Mrs. Buck to take Florence-Ellen to P.S. 169Q at the north of Queens, to be taught by one of the teachers who had taught her the day before. Due to the press of time, Mr. Buck took Florance-Ellen to P. S. 169.

The events of the third day of the strike, Thursday, September 11th included the following. (1) Mrs. Buck took Florence-Ellen to P.S. 169 and was met inside of the building at the reception area by a picket wearing a large sign about the strike, drinking coffee and sitting at the reception table. She greeted Mrs. Buck and asked how she could help her. Mrs. Buck attempted to clarify the role of the picket, then went to the Principal's office. (2) Principal, Mr. Toff, told Mrs. Buck that the custodial staff had set up coffee for the pickets and Mrs. Buck advised that she would complain. (Note - it may be that principals do not supervise custodians). Florence-Ellen was left in school. (3) Upon returning home, Mrs. Buck called the District Superintendent and complained about pickets with coffee inside of P.S. 169. The interesting official answer was given by Miss Scherne as follows: (a) The picket was probably trying to be courteous; and (b) since attendance was sparce, not all of the building was being used, and therefore only one entrance was available, implying that it was therefore not possible to set up the coffee for the pickets at a different location in the building. (4) Mrs. Buck indicated that she did not want to argue the matter with Ms. Scherne, but asked that her request to

get rid of the coffee and pickets inside the building be taken up through channels. The next day it was gone, and a proper working school aide was at the reception desk.

On the fourth day of the strike, Friday, September 12th, Mrs. Buck raised the question of transportation for Florence-Ellen and by that time there were four students in the class, all believed to be coming from P.S. #32. The children are miles away from home. The law requires that transportation be provided for third grade children more than a mile away from home. No transportation had been offered although it was incumbent upon the school system to provide it. Again Mrs. Buck raised questions with the district office.

This was the situation. The district office, as other district offices, had received relayed messages from the office of Superintendent Irving Anker indicating that there was to be no contract bus service for any public school children, not for open enrollment students, not for the handicapped, and not for regular classes, for the duration of the strike although Ms. Scherne indicated that it was her understanding that bus drivers were not on strike.

Mrs. Buck followed with calls to the Chancellor's office and Mr. Anker was, of course, not available. What he had done was to guarantee a 100% effective strike for all children in the New York City public schools who were dependent on school buses for transportation to public schools. No one could help in his office. Superintendent Kenny would not overrule Chancellor Anker; the supervisor of the transportation office in the central board would not override the Chancellor; secretaries and Assistant Superintendents could not help. Central Boafd of Education Member, in charge of Queens, Mr.

Barkan was not available and subordinates made suggestions of concern for the health and safety of the children.

Mrs. Buck submits that Chancellor Anker does not want a school bus to run through Queens. It might be noticed by the public. It might be noticed by strikers. Mr. Anker might be embarrassed to Mr. Shanker and others. And, of course, he might feel that he would be seen in the unfavorable light of not supporting striking teachers.

POINT I

THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT ON THE GROUND THAT FEDERAL COURTS ARE PRECLUDED FROM ASSUMING JURISDICTION OVER MUNICIPAL CORPORATIONS AND THEIR SUBDIVISIONS.

The defendants rely upon Monroe v. Pape, 365 US 167; Moor v. County of Alameda, 411 US 693; and City of Kenosha v. Bruno, 412 US 507 in claiming that courts are precluded from assuming jurisdiction over Municipal Corporations and their subdivisions, but this argument must fall for many reasons. First, the complaint was not brought alone against the Board of Elections and the Board of Education, but against individuals Irving Anker, and Dorothy Kaye, and others whose identities are not yet known. There is no ground therefor for the complaint having been dismissed as against those individuals.

Secondly, the prayer for relief has not been alone for money damages, but for injunctive and declaratory relief to unseat a wrongly elected school board. Cities can, in fact, be sued for

injunctive and declaratory relief in Section 1983 actions. See Garren v. Winston Salem, 439 F. 2d 140 (4th circ., 1971), vacated on other grounds, 405 US 1052; Roth v. Board of Regents, 310 F. Supp. 972, aff'd (7th Circ., 1970), 446 F. 2d 806, rev'd on other grounds, 408 US 564. Many federal courts have held that Monroe v. Pape, supra, does not prevent equitable relief against school districts and political subdivisions of states. See Williams v. San Francisco Unified School District, 340 F. Supp. 438 (1974); Wolfe v. O'Neill, 336 F. Supp. 1255 (1972). The Fifth Circuit Court of Appeals entertained all actions against political subdivisions except those for money damages. See Harkless v. Sweeny Independent School District, 427 F. 2d 319 (5th Circ., 1970), cert. den. 400 US 991. Other circuits have also so allowed. See Conway v. Alfred I. Dupont School District, 333 F. Supp. 1217 (1971); Melton v. Atlanta, 324 F. Supp. 315 (1971).

Cleraly, there has been no intent to eliminate all opportunity to make any kind of claim under 42 US 1983, 1985 or 1986 against municipalities. If that had been the case, every lawsuit against an administrative body would have had to be dismissed. The district courts would have had to stay out of all civil rights cases concerning integration of the public schools. They would have had to stay out of McKnight, et al., v. The Board of Education of Education of the City of New York, 69-C-326 (Eastern District, Weinstein, J.) instead of adjudicating the claims and returning 600 Black students to Franklin K. Lane High School, Brooklyn, following their expulsion en masse without regard to their constitutionally guaranteed rights of due process. But the courts handle those cases and particularly in this circuit and this year. This

circuit, for example, is adjudicating Lombard against the Board of Education of the City School District of New York, 502 F. 2d 631, this circuit having reversed the dismissal in the lower court, cert. den. 95 S. Ct. 1400; and also is now adjudicating Newman v. the Board of Education of the City School District of New York, F. 2d cert. den. 95 S. Ct. 1447 (2d Circ., 1975).

The thinking of this court may be seen clearly by Kletschka v. Driver, 411 F. 2d 436 (2d Circ., 1969), stating:

> "To maintain a cause of action under Section 1983 a plaintiff must show (1) that he has been deprived of some right, privelege, or immunity secured by the Constitution and laws of the U.S. (2) that the defendants subjected plaintiff to this deprivation, or caused him to be so subjected; and (3) that the defendants acted under color of any statute, ordinance, regulation, custom or usage of any State."

and also by this court's ruling in Holmes v. New York City Housing Authority, 398 F. 2d 262 (2d Circ., 1968):

> "A case brought under section 1983 should not be dismissed at the pleadings stage unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved to support the claim".

Other cases include Singleton v. Vance County Board of Education, 501 F. 2d 429 (4th Circ., 1974). Attorneys' fees were approved and a direction for back pay was ordered in Cornist v. Richland Parish School Board, 495 F. 2d 189 (5th Circ., 1974) and these cases were since Monroe v. Pape, supra; Moor v. County of Alameda, supra; and City of Kenosha v. Bruno, supra.

All forms of invidious discrimination in elections can be attacked in Section 1983 actions. See Ury v. Santee, 303 F. Supp.

119 (1969); Nicholls v. Schaffer, 344 F. Supp. 238 (1972); Socialist Workers Party v. Welch, 334 F. Supp. 199 (1971); Brisco v. Kusper, 435 F. 2d 1046 (7th Circ., 1970); Maxey v. Washington State Democratic Committee, 319 F. Supp. 673 (1970). Even in Coalition for Education in District One v. Board of Elections, 495 F. 2d 1090, the District court ordered a new election and this court affirmed.

This second circuit has described even more clearly in Forman v. Community Services, Inc., 500 F. 2d 1246 (2d Circ., 1974) that:

> "While municipal corporations, that is municipalities, are not deemed "persons" under the Civil Rights Act..."agencies" have always been so deemed."

It is significant that federal courts repeatedly rule that cities can be sued for injunctive and declaratory relief in Section 1983 actions. See Garren v. Winston-Salem, 439 F. 2d 140 (4th Circ., 1971) vacated on other grounds, 405 US 1052; Roth v. Board of Education, 310 F. Supp. 972, aff'd 446 F. 2d 806 (7th Circ., rev'd on other grounds) 408 US 564; Baily v. Lawton, 425 F. 2d 1037 (10th Circ., 1970); Steel Hill Development, Inc. v. Sanbornton, 335 F. Supp. 947 (1971); Cleveland Board of Education v. LaFleur, 414 US 632 (1974). The overwhelming weight of authority permits injunctive and declaratory relief against government agencies.

Jurisdiction also lies under 28 U.S.C. Section 1331

Even if it could be said that a city is not a person and therefore 42 USC 1983, 1985 and 1986 would not apply, it would still be possible for a plaintiff, alleging municipal deprivation of federal constitutional or statutory rights, to hold the local government under 28 USC 1331, which gives federal district courts jurisdiction

in suits arising under the Constitution, laws or treaties of the U.S. The courts have inherent power to grant adequate relief. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, (1971). Jurisdiction over school bodies and relief against them has been upheld under Section 1331 in Roane v. Callisburg Independent School District, 511 F. 2d 633 (5th Circ., 1975); Cardinale v. Washington Technical Institute, 500 F. 2d 791 (1974); Skehan v. Board of Trustees of Bloomsburg State College, 501 F. 2d 31 (3rd Circ. 1974); Patterson v. City of Chester, 389 F. Supp. 1093 (1975).

Jurisdiction under 1331 is in no way inconsistent with Kenosha. On the contrary, the court there directed the district court, on remand, to make findings because the stipulations of fact had failed to specify the amount of money in controversy. Recently, in Brault v. Town of Milton (2d Cir, 1975), the Court of Appeals for this circuit applied the Bivens rationale to a case alleging a due process violation by a city. The court permitted a monetary recovery under Section 1331, saying that municipalities have no "special status which would immunize them from suits to redress deprivations of federal constitutional rights." Slip. Op. at 1875.

In a pro se complaint, such as this, the fact that reference was not made to Section 1331, would not prevent the court from utilizing that section to preserve rights. Other cases amply demonstrate that the Bivens rationale can be used for monetary recovery for violations of a number of constitutional rights. See States Marine Lines, Inc. v. Schultz, 498 F. 2d 1146 (4th Cir. 1974); United States ex rel. Moore v. Koelzer, 457 F. 2d 892 (3rd

Cir., 1972); Patterson v. City of Chester, 389 F. Supp. 1093 (1975); Butler v. United States, 365 F. Supp. 1035 (1973).

It should be noted that the Board of Education is primarily an organ of the City of New York and is not an alter ego of the state such as to possess Eleventh Amendment immunity. See Edelman v. Jordan, 415 US 651 (1974); Fay v. Fitzgerald, 478 F. 2d 181, 184 n. 3 (2d Cir. 1973); Forman v. Community Services, Inc., et al., 500 F. 2d 1246 (2d Cir. 1974); Smith v. Concordia Parish School Board, 387 F. Supp. 887 (1975); Young v. Hutchins, 383 F. Supp. 1167 (1974).

POINT II

THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT ON THE GROUND THAT FEDERAL COURTS SHOULD ABSTAIN UNTIL STATE PROCEEDINGS, INCLUDING APPEAL ARE COMPLETED.

This Court of Appeals has amply demonstrated that, "...a plaintiff with a claim for relief under the Civil Rights Act, 42 U.S.C., Section 1983 is not required to exhaust state remedies". See James v. Board of Education, 461 F. 2d at 470 (2d Cir. 1972) and it is further stated in that case, "It is no longer open to dispute that a plaintiff with a claim for relief under the Civil Rights Act...is not required to exhaust state judicial remedies", citing Monroe v. Pape, supra; Rodriguez v. McGinnis, 456 F. 2d 79 (2d Cir. 1972) (in banc); Sostre v. McGinnis, 442 F. 2d 173 (2d Cir. 1971) (in banc), cert. denied, 404 U.S. 1049.

In this action, the original state court proceeding to which the defendents refer, and claim as a bar to this proceeding, was brought by "Article 78" pursuant to Section 7801 et seq. of the New York Civil Practice Law and Rules. Section 7803, which provides as follows, limits the application. Thus:

> "Sec. 7803 Questions raised. The only questions that may be raised in proceeding under this article are:
>
> 1. whether the body or officer failed to perform a duty enjoined upon it by law;
>
> 2. or whether the body or officer proceeded, is proceeding, or is about to proceed without or in excess of jurisdiction;
>
> 3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
>
> 4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence. As amended L. 1962, c. 318, Section 26.

The claims presented in this case have not been raised and determined by any state court. This lawsuit is based on causes of action - the earlier case sought, through Article 78, to prevent an improper election from taking place on the very next day after a hearing was brought on by Order to Show Cause. The instant suit seeks to upset the wrong election, seeks punitive damages of $100,000, claims a background of systematic, racial-religious discrimination, and claims redress under the First and Fourteenth

Amendments to the United States Constitution. An Article 78 proceeding is simply not the proper vehicle to adjudicate all of the constitutional claims. Furthermore, the doctrine to abstain which is sometimes followed by the federal courts generally is not followed in Civil Rights actions. See Baily v. Patterson, 369 US 31 (1962); Zwickler v. Koota, 389 US 241 (1967); Morena v. Henckel, 431 F. 2d 1299 (5th Cir. 1970); Stradley v. Anderson, 456 F. 2d 1036 (8th Cir. 1972); Marin v. University of Puerto Rico, 346 F. Supp. 470 (1972). Also, traditionally courts have construed liberally complaints filed under Section 1983 by those who did not have counsel. See Morgan v. Sylvester, 125 F. Supp. 380, 220 F. 2d 758 (aff'd 2d Cir.), 350 US 867, Cert. den. Even if the plaintiff had made an error in choice of forum, by resorting to Article 78, and especially where the action was dismissed for lack of jurisdiction, and not on merits, she would not then be forever barred from adjuciation of all of her claims in the federal court.

Even in Monroe v. Pape, supra, the Supreme Court ruled that "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked". See also King v. Smith, 392 US 309 (1968). The Supreme Court, stating decisions of this court, established that a plaintiff in an action brought under the Civil Rights Act, is not required to exhaust administrative remedies, where the constitutional challenge is sufficiently substantial.... Again, the existence of a state court remedy does not bar recovery under 42 USC 1983. See Egan v. Aurora, 365 US 514 (1961); Whitner v. Davis, 410 F. 2d 24 (9th Cir. 1969). That there are state remedies avail-

able is not sufficient ground for dismissal of the action. Relief under Section 1983 is not inappropriate even where relevant state remedies are available but not pursued. See James v. Ogilvie, 310 F. Supp. 661 (1970); Wilwording v. Swenson, 404 US 249 (1971); King v. Smith, 392 US 309 (1968). Where federal courts abstain from deciding Civil Rights cases on merits, such abstention is a closely restricted one which may be invoked only in a narrowly limited set of special circumstances. See Holmes v. New York City Housing Authority, supra.

Actions under Section 1983 are customarily brought into the federal courts; they may be brought into state courts, but such litigation is rare. See Note, 82 Harvard Law Review 1486 (1969). See Danner v. Moore, 306 F. Supp. 433 (1969); Lucia v. Duggan, 303 F. Supp. 112 (1969); Westley v. Rossi, 305 F. Supp. 706 (1969); Hayes v. Secretary of Department of Public Safety, 455 F. 2d 798, (4th Cir. 1972); Potter v. McQueeney, 338 F. Supp. 1133 (1972).

Even in Gangemi v. Sclafani, 506 F. 2d 572 (1974) this court upheld the fact that Eastern District Judge Weinstein, extracted federal issues, although the case had originally been taken to a state court. That case also involved an election, and this circuit court upheld the district court's retaining jurisdiction over those federal issues. Finally, in Coalition for Education in District One. v. the Board of Elections of the City of New York, 495 F. 2d 1090 (Second Cir. 1974), the southern district took jurisdiction, there had been no exhaustion of remedies that might have been raised in State courts, the election was declared invalid, a new election was ordered and this court affirmed.

POINT III

THE FEDERAL QUESTION IS SUBSTANTIAL.

It is clear that Fourteenth Amendment rights, if denied, create substantial federal questions. Denial of First Amendment rights, do likewise, as will be seen. Schools particularly are important and guarded by courts. Elections are important and guarded by courts. When, as in this case, First Amendment and Fourteenth Amendment rights are denied in an election for school board members, there is indeed a substantial federal question in a dynamic case.

States may regulate the use of their public school facilities, of course, but while regulation is authorized, it is also necessary, as the Supreme Court said in Brown v. Louisiana, 389 US 131 (1966) that the State do so in a reasonable and non-discriminatory manner. Public institutions, including schools, of course are subject to the equal protection clause of the Fourteenth Amendment. See Evans v. Newton, 383 US 296 and Ellis v. Allen, 4 A.D. 2d, 343 N.Y.S. 2d 624 (1975) app. dismissed.

This court in James v. the Board of Education of Central District No. 1 of the Towns of Addison et al., 461 F. 2d 566, noted:

> "The Supreme Court has more than once instructed that (t)he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." (citing cases).

Courts have been especially mindful also of the denial of due process to teachers. See Buck v. The Board of Education of the City of New York, 71-C-963, Eastern District of New York, (Judd, J., 1975) vacat-

ing dismissal, remanding plaintiff for proper hearings, ordering backpay of over $62,000 plus interest. See also Lombard v. The Board of Education of the City School District of New York, supra; (1974) and Newman v. The Board of Education of the City of New York, supra, (1975).

The Supreme Court in 1975 has indicatd the presence of a substantial federal question in denial to students constitutional rights of due process where students were suspended from classes following their having brought intoxicating beverages to school. See Wood v. Strickland, et al., Slip Op. 73-1285 (1975). Certainly the same rationale for teachers and students extends to school board members, candidates, and school board elections. If that were not so, the Bill of Rights would be at stake. The Supreme Court aptly described it thus, "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." See West Va. State Board of Education v. Barnette, 63 S. Ct. 1178, 319 U.S. 624.

Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief". See Bill v. Hood, Cal., 327 US 678. Also, regarding the Civil Rights statutes, the court has stated that they are "directed at the maladministration, neglect and disregard of laws by state and local officials and has the purpose of providing a federal remedy for deprivation of federally guaranteed rights." See Huey v. Barloga, 277 F. Supp. 864. Also, where a violation of the Constitution is asserted and the aggrieved party proceeds under the Civil Rights

Act, it is the duty of the District Court to use its powers in equity to grant such injunctive relief as to restrain the State from exercising its powers. See Woods v. Wright, 334 F. 2d 369 (4th Cir. 1969); Schnell v. City of Chicago, 407 F. 2d 1084 (7th Cir., 1969); Dixon v. Duncan, 218 F. Supp. 157 (1963).

This case does not alone claim denial of Fourteenth Amendment rights, but First Amendment rights of free speech and free association. Thus, where parent associations or parent-teacher associations, in their quasi-official roles, deny, in cooperation with Board of Education staff, equal publicity in an election, to candidates who did not submit to "screening" there is a denial of First Amendment Rights of free association and a denial of free speech by silencing, for example, a dissenting candidate. This is doubly so because, where parent associations or parent-teacher associations, publicize material about favored, "screened" candidates, and not about all of the candidates, to large numbers of people who are not their members, and never chose to be, there is a denial of First Amendment Rights of Free Association to non-member parents. As Judge Orrin Judd so aptly stated in Buck v. Board of Education, supra, Memorandum and Decision dated December 15, 1972, p. 25, in an analagous situation, "Freedom must work in both directions. Therefore, a teacher must also have the right to refrain from joining a union, or from participating in a strike called by the union". The analogy is clear. Just as a teacher may chose to join a union, or may chose not to join a union, so a parent may chose to join a parent association or chose not to join a parent association. Likewise, a candidate may chose to appear before a designated screening panel or may chose not to do so. But she may not be punished

by those acting under color of the Statutes for exercising her constitutionally guaranteed First Amendment right of free association.

42 USC 1983 is clear. It states and plain language,

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priveleges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The complaint in this action is entirely proper and legal, asserting proper claims and praying for proper relief. It is incumbent upon this court to grant such relief.

CONCLUSION

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE REVERSED; THE CASE REMANDED WITH INSTRUCTION AND JUDGMENT GRANTED APPELLANT.

ACKNOWLEDGEMENT

Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge Him, and he shall direct thy paths.

Proverbs 3:5,6.

Respectfully submitted,

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Ruth E. Buck
Pro Se

Dated: September 16, 1975
Queens, New York